

AHMAD H. BERUNI
Claimant

LIES READY MIX & PAVING
Respondent

EMPLOYERS MUTUAL CASUALTY COMPANY
Insurance Carrier

ORDER

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant was injured on January 14, 1999, when he blacked out while driving an 18-wheel truck. Claimant is Islamic and for approximately one and one-half to two weeks before the accident claimant fasted as a part of his observance of Ramadan. Respondent argues that this case presents a unique circumstance involving a middle ground somewhere between a personal risk defense and a defense that claimant intentionally caused injury. The Board agrees that the circumstances fall between those doctrines but concludes that neither applies in this case and the claim should be considered compensable. As respondent acknowledges, this is not a case involving only personal risk. The fact that claimant was driving a company vehicle at the time he blacked out adds a work-related risk that makes the accident compensable even if the blackout was a personal

risk. *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 824 P.2d 1001, *rev. denied* 250 Kan. 804 (1992). Nothing in the evidence would suggest that claimant intentionally injured himself. In fact, respondent acknowledges that is the case.

Respondent, in effect, is asking the Board to adopt a policy based upon fault. As respondent points out, the Act contains several provisions which do include a fault factor, including drug and alcohol defenses, but as a general rule the Workers Compensation Act calls for a no-fault system with exceptions only as specifically provided in the Act. This accident involved a risk of employment, namely the driving of the truck, and consequently the claim is compensable.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark on July 1, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
P. Kelly Donley, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director